APPENDIX

OPINION OF APPELLATE DIVISION

(February 14, 1967)

In the Matter of SANTO R. SGARLATO, JR., an Attorney, Respondent. SOLOMON A. KLEIN, Petitioner.—This is a proceeding to discipline respondent, an attorney at law, for professional misconduct based on 29 charges, many of which involve a number of specifications. The Justice of the Supreme Court to whom the issues were referred has held extensive hearings and has filed his report. He found that charges 1, 10, 11, 18, 22, 24 and 26 were sustained and that the other charges were not sustained. Petitioner now moves to confirm the findings as to the charges thus reported as sustained and to disaffirm the findings as to charges 2, 3, 7, 8, 9, 14, 17 and 29, making no application with reference to the findings as to charges 6, 12, 15, 16, 19, 20, 21, 25, 27 and 28. He has conceded that charges 4, 5, 13 and 23 were not established. Respondent cross-moves to disaffirm the report with respect to the charges found therein to have been sustained and to confirm the report as to the remaining charges. As to charges 1, 11, 22, 24 and 26, the findings that they were sustained are confirmed. Charge 1 was that respondent, retained as attorney on behalf of infant claimants to recover damages for personal injury, compromised their claims without court approval. Charge 11 was that respondent caused a client to execute a retainer agreement in which the name of the attorney was left blank and thereafter accepted it and acted thereunder. Charge 22 was that respondent, in the years 1956 through 1959, did not file statements of retainer in contingent fee negligence matters. The evidence indicates that during the years in question he failed to file at least 60 statements of retainer. Charge 24 was that respondent, in the years 1956 through 1961, failed to maintain proper books and records of his transactions with clients. Charge 26 was that respondent, from October, 1955 to June, 1960, failed to maintain a

separate trust account for the deposit of clients' and escrow funds and commingled such funds with his own money. As to charges 10 and 18, the findings that they were sustained are confirmed and we make additional or different findings as to certain evidentiary matter supporting such findings, as stated below. Charge 10 was that in the period from January 1, 1956 to June 30, 1960 respondent deceived this court by knowingly filing numerous statements of retainer in contingent fee negligence matters which misstated the agreed terms of his compensation. While we agree with the Justice's incidental finding that an intent to deceive was not proved, we believe that respondent's conduct indicated a reckless disregard of the pertinent rule of this court. Charge 18 was that respondent employed lay persons to solicit individuals having negligence claims to retain him as their attorney. The Justice sustained this charge on the basis of only one of the six matters involved in this charge, the Palefsky matter. We confirm the finding not only on the basis of that matter but also the Cannano and the John Barone matters. As to charges 2, 3, 7, 8, 9, 14, 17 and 29, the findings that they were not sustained are disaffirmed and we find that these charges were sustained, except that charges 8, 9 and 29 were sustained in part. Charge 2 was that respondent, representing infant clients, defrauded the infants by taking excessive fees without court approval. We find this charge sustained in that, regardless of the fact that in some cases the fee might not have been excessive, respondent failed to obtain court approval for the fees. In any event, we also find that with respect to three clients, the two De Marco infants and the Hanson infant, respondent received an excessive fee, the equivalent of 50% of the settlements. Charge 3 was that respondent defrauded infant clients by paying money, out of settlements of their claims, to third persons without court approval. This charge must be sustained, in that it was conceded that in two in-

stances respondent had paid moneys out of infants' settlements, without court approval, to a physician who had rendered services in connection with the infants' claims. Charge 8 was that respondent received $797 for the purpose of paying medical expenses incurred by his clients, which moneys he deposited in his own account and diverted to his own use. Charge 9 was that respondent received $300 from certain clients over a period of time to be held in escrow and that he diverted these funds to his own use. In our opinion, the evidence sustains these two charges to the extent that respondent improperly commingled his clients' funds with his own. Charge 14 was that respondent accepted retainers from clients and acted as their attorney when the interests of such clients were in conflict. In our opinion, the evidence sustains the charge with regard to the specification involving the Di Tucci accident of May 9, 1957. Charge 29 was that respondent obstructed the judicial inquiry by knowingly giving false, misleading and perjurious testimony before the Additional Special Term. In our opinion, in the incidents designated 1, 3 and 4 in the Justice's consideration of this charge respondent gave false and misleading testimony in an apparent attempt to obstruct the Judicial Inquiry. To this extent the charge is sustained. The evidence clearly proved charges 7 and 17. Charge 7 was that respondent knowingly caused a complaint in an action to be prepared, verified and served, in which it was falsely alleged that one of the plaintiffs had been appointed guardian ad litem of the two infant plaintiffs. Charge 17 was that respondent made a valuable gift to an insurance company adjuster with intent to influence his actions. Accordingly, petitioner's motion is granted with respect to charges 1, 2, 3, 7, 10, 11, 14, 17, 18, 22, 24 and 26; is granted with respect to charges 8, 9 and 29 only to the extent indicated; and is otherwise denied; and respondent's cross motion is denied insofar as it is with

respect to these 15 charges and is otherwise granted. In mitigation of the discipline to be imposed upon respondent, we have considered the absence of any complaints by his clients, the fact that almost all the proved misconduct occurred prior to 1960, and the absence of any charges in the intervening years. Accordingly, respondent is suspended from the practice of law for a period of two years, commencing March 6, 1967. Beldock, P. J., Ughetta, Christ, Brennan and Benjamin, JJ., concur.

ORDER OF SUSPENSION OF APPELLATE DIVISION

(February 14, 1967)

A disciplinary proceeding having been instituted in this court by petitioner, Solomon A. Klein, against respondent Santo R. Sgarlato, Jr., an attorney and counselor at law admitted to practice by this court on October 19, 1955, under the name of Santo Rocco Sgarlato, Jr., the petition praying that the said respondent be disciplined for professional misconduct upon the charges therein set forth; the said respondent having filed his answer to said petition; this court by order dated December 4, 1964 having referred the issues raised by the pleadings to the Honorable Nicholas M. Pette, Justice of the Supreme Court, for hearing and for a report setting forth his findings upon the issues; the said Justice having held hearings and having filed his report setting forth his findings, together with a transcript of the testimony and the exhibits; petitioner having moved by notice of motion dated October 31, 1966 to confirm the said report with respect to the findings which sustain charges 1,10,11,18,22,24 and 26 and to disaffirm the report with respect to the findings which fail to sustain charges 2,3,7, 8,9,14,17 and 29; respondent having cross moved to disaffirm the report with respect to the charges found therein to have been sustained and to confirm the report as to the remaining charges;

NOW, upon the said petition, verified November 19, 1964; upon the said answer verified November 27, 1964; upon the said report of Mr. Justice Pette, dated April 12, 1966; upon the said transcript and exhibits; and upon all the papers filed herein; and upon the opinion and decision slip of the court herein, heretofore filed and made a part hereof; and Solomon A. Klein, Esq., petitioner appearing in person, and Rudolph F. DiBlasi, Esq., appearing of Counsel for respondent; and due deliberation having been had thereon; it is:

ORDERED that the said motions by petitioner and respondent are hereby respectively granted and denied to the

extent set forth in the opinion and decision slip of the court herein; and it is further

ORDERED that the said report of Mr. Justice Pette is hereby confirmed to the extent set forth in the said opinion and decision slip of the court herein, and otherwise disaffirmed; and new findings of fact are hereby made as indicated in said opinion and decision slip; and it is further

ORDERED that the respondent Santo R. Sgarlato, Jr., is hereby suspended from the practice of the law for a period of two years commencing March 6, 1967 and continuing until the further order of this court, with leave to apply for reinstatement after the expiration of said period of two years, upon furnishing satisfactory proof that during said period he has actually refrained from practicing or attempting to practice as an attorney and counselor at law, that he has fully complied with this order and with the instructions annexed hereto and that he has otherwise properly conducted himself; and it is further

ORDERED, pursuant to Statute (Judiciary Law, § 90), that the said respondent Santo R. Sgarlato, Jr., during the period of such suspension and until the further order of this court, is hereby directed to desist and refrain from the practice of the law in any form, either as principal or agent or as clerk or employee of another; he is forbidden to appear as an attorney and counselor at law before any court, judge, justice, board, commission or other public authority; and he is hereby forbidden to give to another any opinion as to the law or its application or any advice in relation thereto.

Enter:

HERMAN M. POGUL
Clerk of the Appellate Division

Judgment of Court of Appeals
(June 14, 1968)

MTR OF SGARLATO ORDER AFFIRMED WITHOUT COSTS NO OPINION ALL CONCUR

RAYMO D J CANNON CLERK COURT OF APPEALS ALBANY.